COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[(Chapter VIII. Rule 32(2) (b)]

Description of case

Writ Petition No. 3915 of 2001 (S/S) **decided on: 14th July, 2005**

Writ Petition No. 3915 of 2001 (S/S)
(Old No. 14077 of 1993)

Ratna Devi
W/o Late Amar Singh
R/o village and Post Office Kalyani
District Uttar Kashi. ……Petitioner

Versus

1. Union of India, Ministry of Defence
   New Delhi.
2. Lt. Shaiyak Abhilekh Adhikari
   (Asst. Records Officer)
   through Prabhari Abhilekh, Pioneer
   Care Records, Ekak Pioneer Care Records Cell
   A.S.C. Centre (South) Complex
   P.O. Agram, Banglore-560007.
3. C.D.A. Pension, Allahabad through
   its Incharge. ……..Respondents

Shri Vipul Painuly. learned Counsel for the petitioner.
Learned Standing Counsel for Union of India.

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date: 14.07.2005

(Hon. Mr. Justice Prafulla C. Pant)

Judgment Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

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Learned Standing Counsel for Union of India.

Hon'ble Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of Constitution of India, a mandamus has been sought commanding the respondents to grant pension to the husband of petitioner, Pioneer Amar Singh (since deceased) from the date of his discharge from Army.

2. Brief facts of the case, as narrated in the writ petition are that Late Shri Amar Singh, husband of the petitioner, joined Indian Army in the 1961, as Pioneer (Sepoy) with Service No. 7998286. His date of birth was 11.03.1943. At the time of enrolment in Army, he was

hale and hearty with good character but during his tenure of service, he became mad due to neurotic depressive reaction, and on account of this disability, discharged from service on 05.06.1972. Shri Amar Singh, Ultimately died on 24.06.1992. Petitioner, widow of the deceased, pulling on her days with four children, without any financial assistance. She made representation in 1992 regarding pension of her husband but to no avail. Hence this petition.

3. On behalf of respondent, Lt. H. Sankaradhas, of Pioneer corps filed counter affidavit stating that initially in 1961, Sri Amar Singh service No. 7998286, was enrolled as labourer, and it is only on 09.06.1964, he was appointed as Pioneer. As such it is denied that his length of service was eleven years and one month. It is stated that name of petitioner, as wife of Shri Amar Singh is not recorded of Army records. It is stated in the counter affidavit that due to absence from duty without leave, which is a offence, under Section 39 (a) of Army Act, 1950, the said Sepoy was awarded imprisonment in Military custody for 28 days. Admitting the mental illness of the Sepoy, it is stated that on 09.09.1971, he was admitted in 158 Base Hospital, Barrackpur and thereafter Military Hospital, Namkum, and ultimately due to invalidation, discharged from the service on 05.06.1972. It is alleged that the invalidating disability of the soldier was not attributable or aggravated by military service, as such no relaxation, in required length of service for pension retirement gratuity was released in November, 1972. No appeal was preferred on behalf of the Sepoy to C.D.A. (pension) within one year even after communication made in this regard. The Sepoy is not entitled to pension for

service for the mere period of seven years and 228 days, as the disease of the member of service was not attributable to military service. The employee was not entitled to pension, as he could not complete 15 years of service. Therefore, no question arises as to family pension.

4. This writ petition was filed before Allahabad High Court in 1993, and received by transfer to this court under Section 35 of U.P. Reorganization Act, 2000, for its disposal.

5. I heard learned Counsel for the parties and perused the record.

6. It is strange that petitioner or her husband did not make any representation since 1972 to 1992 i.e. for twenty years. The writ petition was filed only in 1993.

7. Admittedly Pioneer Amar Singh did not complete, qualifying service for pension at the time of his discharge. Also, his invalidity on account of neurotic depressive reaction cannot be said to be attributable to military service. Therefore, shelter of relaxation under Rule 173 of Pension Regulations of Army, 1961, was also not available to the Sepoy, consequently the petitioner cannot be said to be entitled to family pension. In the prayer clause of writ petition, advertently or inadvertently, no family pension is claimed. In Union of India Vs. Baljeet Singh (11) S.C.C. 315, the Apex Court has held that no disability pension, can be granted in a case of neurotic disorder which cannot be attributed to military service.

8. Learned Counsel for the petitioner, drew attention of this Court to the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities Protection of Rights

and Full Opportunities) Act, 1995, and argued that pension cannot be denied to the husband (deceased) of the petitioner. I have gone through said provision. It only provides that the employee cannot be reduced in rank merely on account of the fact that he has acquired some disability during the service. That is not the case here.

9. In view of above discussion, the writ petition is liable to be dismissed. The same is dismissed.

(Prafulla C. Pant, J.)

Dt: 14th July, 2005
Sweta